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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,900	10/15/2003	Sean E. Sherrod	10739.17.78	6250

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MINNEAPOLIS, MN 55402

EXAMINER
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ARTHUR JEANGLAUDE, GERTRUDE

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/685,900

Applicant(s)

SHERROD, SEAN E.

Examiner

Gertrude Arthur-Jeanglaude

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-28 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-14 is/are rejected.
- 7) ☒ Claim(s) 6 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/4/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1-28 are presented for examination.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, are rejected under 35 U.S.C. 102(b) as being anticipated by Jackson et al. (U.S. Patent No. 6,033,338).

As to claim 1, Jackson et al. disclose a vehicle comprising an engine (12); a CVT (14) operatively coupled to the engine wherein the transmission has a continuous ratio range (See col. 4, lines 62-67); Jackson et al. disclose an engine braking assist selector which may be activated by an operator of the vehicle (See abstract; hybrid mode entered as a selector to allow a user to perform stepped down shifts to provide engine braking);

Jackson et al. disclose a controller (20) operatively coupled to the CVT and engine braking assist selector, the controller programmed with an engine braking algorithm wherein the controller implements the algorithm if the engine braking assist selector is activated and outputs a control to the CVT to alter the ratio of the CVT to produce engine braking in an amount selected by the engine braking assist selector (See col. 5, lines 1-18).

As to claim 2, Jackson et al. disclose the engine braking assist selector has multiple settings that the operator of the vehicle may select from to control the amount of engine braking provided (See col. 5, lines 33-45).

As to claim 3, Jackson et al. disclose the engine braking assist selector comprises a multi-position switch (See col. 5, lines 19-27).

As to claim 4, Jackson et al. disclose the multi-position switch is located on a handlebar of the vehicle (See col. 5, lines 19-26; Fig.1 # 24, 26,28).

As to claim 5, Jackson et al. disclose the engine braking assist selector comprises a user selectable menu on an instrument panel of the vehicle (See col. 5, lines 21-32).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. in view of Ito et al. (U.S. Patent No. 6,513,611).

As to claims 7-9, Jackson et al. disclose the CVT belt as discussed but fail to specifically disclose the CVT is a rubber belt driven or a steel or is hydrostatic. In an analogous art, Ito et al. disclose the rubber, steel and hydrostatic CVT (See col. 3, line 66; col. 13, lines 65-67). It would have been obvious to one of ordinary skill in the art at

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the time of the invention to modify the system of Jackson et al. with that of Ito et al. by having a rubber, steel hydrostatic CVT belt in order to control the traveling speed of the vehicle.

Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. in view of Warner (U.S. Patent No. 6,536,408).

As to claim 10, Jackson et al. disclose an interface rider selectable engine braking assist in a toroidal CVT, the interface comprising an engine braking assist selector (See col. 5, lines 1-18); and a controller (20) receiving inputs but fails to specifically disclose that it receives input from a throttle position sensor and an engine braking assist selector wherein if the throttle position sensor is above a predetermined reading, no engine braking is implemented but if the throttle position sensor is below the predetermined reading, an engine braking algorithm is implemented by the controller wherein the amount of engine braking is dependent upon the output of the throttle position sensor and the output of the engine braking assist selector. In an analogous art, Warner discloses an engine brake control integration with vehicle service brakes wherein the controller (engine computer) receives input from a throttle position sensor and control algorithm is needed (See col. 2, lines 39-50; col. 3, lines 19-59). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Jackson et al. with that of Warner by having a throttle position sensor and an engine braking assist selector wherein if the throttle position sensor is above a predetermined reading, no engine braking is implemented but if the throttle position sensor is below the predetermined reading, an engine braking algorithm is implemented

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by the controller wherein the amount of engine braking is dependent upon the output of the throttle position sensor and the output of the engine braking assist selector since it would control the vehicle service brakes.

As to claim 11, Jackson et al. disclose the engine braking assist selector has multiple settings that the operator of the vehicle may select from to control the amount of engine braking provided (See col. 5, lines 33-45).

As to claim 12, Jackson et al. disclose the engine braking assist selector comprises a multi-position switch (See col. 5, lines 19-27).

As to claim 13, Jackson et al. disclose the multi-position switch is located on a handlebar of the vehicle (See col. 5, lines 19-26; Fig.1 # 24, 26,28).

As to claim 14, Jackson et al. disclose the engine braking assist selector comprises a user selectable menu on an instrument panel of the vehicle (See col. 5, lines 21-32).

### ***Allowable Subject Matter***

Claims 6, 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art fails to disclose the limitations as set forth in claims 6 and 15.

Claims 16-28 are allowed.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gertrude Arthur-Jeanglaude whose telephone number is (571) 272-6954. The examiner can normally be reached on Monday-Friday from 8:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GAJ

*GAS*

September 14, 2005

*Gertrude A. Jeanglaude*  
GERTRUDE A. JEANGLAUDE  
PRIMARY EXAMINER